No. 75-281

Supreme Court, U.S.
FILED
NOV 13 1975
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

JOHN G. SEAY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-281

JOHN G. SEAY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that there was insufficient evidence of his fraudulent intent to cause a forged or fraudulently made security to be transported in interstate commerce.

Following a non-jury trial on stipulated facts in the United States District Court for the Eastern District of Illinois, petitioner was convicted of one count of unlawful transportation of a falsely made security in interstate commerce, in violation of 18

U.S.C. 2314. He was sentenced to three years' imprisonment, suspended on condition that he spend four months in a jail-type institution. The court of appeals affirmed *per curiam* (Pet. App. A).

The stipulated evidence showed that on June 27, 1972, petitioner caused his employer to sign a check drawn on its account at an East St. Louis, Illinois, bank, payable to a fictitious payee (S. 2b; Exs. A and B).[1] On the following day, petitioner opened an account with his personal funds at a different bank in East St. Louis, Illinois, in the name of that fictitious enterprise (S. 2c; Ex. D). On June 29, 1972, petitioner endorsed his employer's check in the name of the fictitious authorized signatory and deposited it in the newly opened account (S. 2d; Ex. C). On July 3, 1972, petitioner drafted a check payable to himself on the fictitious account, in an amount in excess of this deposit. Petitioner signed the name of the fictitious authorized signatory as drawer of the check (S. 2f; Ex. E). On the same day, he endorsed this check in his own name and deposited it in his personal account at a bank in St. Louis, Missouri (S. 2h; Ex. E). Upon deposit, this check was transported from St. Louis, Missouri, to East St. Louis, Illinois, for payment (S. 2i). On July 7, 1972, petitioner's Illinois bank decided not to honor that check due to suspicious circumstances (Ex. A).[2]

[1] "S." and "Ex." refer respectively to the stipulations and government exhibits at trial.

[2] The record does not disclose the manner in which the bank was alerted to the fraudulent nature of this check.

On August 4, 1972, petitioner signed a confession, which constituted a portion of the stipulations (S. 2a), admitting the fraudulent scheme. He also authorized his Illinois bank to make his employer's account whole (S. 2*l*; Ex. G).

Petitioner contends (Pet. 5) that his scheme to defraud his employer had reached fruition when he deposited the first check into the newly opened account, and hence there was no evidence of the requisite fraudulent intent at the time of the subsequent interstate transportation of the second check drawn on this account and made payable to himself. The courts below properly rejected this contention, concluding that the attempted transfer of funds from the intermediary account to his personal account, which caused the check to be transported in interstate commerce, was an integral part of the fraudulent scheme (Pet. App. A, p. A-2; Pet. App. C, p. A-14).

Petitioner's argument that the fraudulent scheme was complete upon deposit of the first check in the intermediary account will not withstand analysis. The transfer of the proceeds of that check through the dummy account allowed petitioner to obtain physical possession of the funds without personally appearing in his employer's accounts as the payee of a check. As petitioner admitted in his confession, the issuance of the second check under a fictitious name was a necessary part of his plan to convert the funds while minimizing the possibility of detection and prosecution (S. 2a; Ex. A). Petitioner therefore

had the requisite fraudulent intent when he signed the fictitious name on the second check and caused it to be transported in interstate commerce by depositing it in his own account. *United States* v. *Ackerman*, 393 F. 2d 121 (C.A. 7). See *United States* v. *Sheridan*, 329 U.S. 379, 384-385, 387; *United States* v. *Johnson*, 504 F. 2d 622, 627 (C.A. 7); *United States* v. *DeKunchak*, 467 F. 2d 432, 437 (C.A. 2).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1975.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1975 596922 110